U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33421747

Date: SEPT. 3, 2024

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner seeks employment-based first preference (EB-1) immigrant classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding the Petitioner did not establish that she has received a major, internationally recognized award, or that she meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3)(i) – (x). We dismissed the Petitioner's appeal. The matter is now before us on combined motions to reopen and reconsider.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motions.

I. MOTION REQUIREMENTS

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (ii). We may grant motions that satisfy the aforementioned requirements and demonstrate eligibility for the requested benefit.

II. ANALYSIS

In our March 2024 dismissal decision, we adopted and affirmed the Director's decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st

Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). We noted that the Director's decision provided a detailed analysis of evidence submitted for each of the claimed criteria and discussed how the evidence did not sufficiently demonstrate that the Petitioner met each criterion.[1]

A. Motion to Reopen

On motion, the Petitioner provides a March 28, 2024 letter from G-B-, Director and Executive Producer at [redacted] indicating that the Petitioner "will continue her role as the Main Producer at our production company for projects such as [redacted] among others." She also submits a March 30, 2024 letter from R-B-, Vice President of [redacted] discussing the Petitioner's capabilities as a producer and "her contributions to various intern videos for [redacted] R-B-'s letter requests that the Petitioner "be granted permission to work" as a Video Producer for [redacted] and anticipates their "continued collaboration."[2] While these letters and the accompanying deal memos show that the Petitioner intends to continue her work in the United States,[3] they do not satisfy any of regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), address the grounds for denial of the petition, or render her eligible as of the filing date of the Form I-140.[4]

In addition, the motion includes a March 30, 2024 letter from B-F-M-, currently CEO at [redacted] and formerly the Petitioner's "teacher and thesis assessor" at [redacted] asserting that they collaborated on [redacted] and that their "project garnered significant recognition, with four awards and eleven nominations worldwide, including a nomination for best producer for [the Petitioner]." B-F-M-'s letter does not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that the Petitioner meets the requirements of 8 C.F.R. § 204.5(h)(3)(i) or any other regulatory criterion. Nor does his letter otherwise offer any new facts to overcome the grounds for denial.

The Petitioner also resubmits copies of previously presented documents, but they do not introduce any new facts to overcome the bases for denial. The motion to reopen does not offer new facts or evidence indicating that she has received a major, internationally recognized award, or that she satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner's motion therefore has not overcome the stated grounds for dismissal in our appellate decision.

B. Motion to Reconsider

The Petitioner states on motion that she is "resubmitting detailed explanations" regarding the categories of evidence at 8 C.F.R. § 204.5(h)(3)(i)-(x) she claims to meet. She asserts that she

[1] While the Director's decision contained some statements that would be more relevant to a final merits determination, we agreed with the Director's ultimate conclusion that the Petitioner did not meet the plain language of at least three regulatory criteria.

[2] The letters from G-B- and R-B- were accompanied by deal memos outlining the terms of the Petitioner's work for their organizations as a producer.

[3] *See* 8 C.F.R. § 204.5(h)(5) (indicating that "the petition must be accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise").

[4] *See* 8 C.F.R. § 103.2(b)(1) (stating that a "petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request").

previously provided sufficient evidence of her extraordinary ability with the "initial application, response to the Request for Evidence (RFE), and appeal" and that she finds "it necessary to revisit the supporting materials." While the Petitioner's motion reiterates her previous claims of eligibility, she does not identify any legal or factual error in our appellate decision.

The Petitioner also points to documents previously considered in earlier proceedings and maintains that she meets all ten of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner's conclusory statements that she satisfies ten regulatory criteria and therefore is qualified for the requested classification, and her repetition of arguments previously made in support of the appeal, do not meet the requirements of a motion to reconsider. Her arguments do not demonstrate that our appellate decision was based on an incorrect application of law or USCIS policy and that our decision was incorrect based on the evidence in the record at the time of the decision.

III. CONCLUSION

The Petitioner has not established new facts relevant to our appellate decision that would warrant reopening of the proceedings, nor has she shown that we erred as a matter of law or USCIS policy. Consequently, we have no basis for reopening or reconsideration of our decision. Accordingly, the motions will be dismissed. 8 C.F.R. § 103.5(a)(4). The Petitioner's appeal therefore remains dismissed, and her underlying petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.